

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jafar Borden,

Petitioner,

-v-

United States of America,

Respondent.

15-cr-95 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On April 12, 2016, the Government charged Jafar Borden in a four-count indictment. Dkt. No. 97. On December 7, 2016, he pleaded guilty to Counts One and Four, charging him with participating in a racketeering conspiracy in violation of 18 U.S.C. § 1962(d) and using a firearm in relation to a racketeering conspiracy in violation of 18 U.S.C. § 924(c)(1)(A)(i) respectively. On May 19, 2017, the Court imposed a sentence of 48 months' imprisonment on Count One and 60 months' imprisonment on Count Four, to be served consecutively, followed by three years of supervised release on each Count, to run concurrently.¹

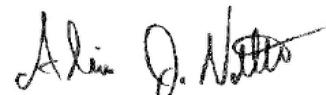
On November 13, 2019, Borden filed a petition to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 in light of the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). Dkt. No. 2687. Borden's conviction on Count Four can no longer stand after *Davis*, because a racketeering conspiracy qualifies as a "crime of violence" only under the now-stricken residual clause of 18 U.S.C. § 924(c)(3). *Davis*, 139 S. Ct. at 2336.

¹ The Court adjusted this sentence, pursuant to U.S.S.G. § 5G1.3(b), for the 45 months Borden had already served on the relevant conduct, and thus imposed a sentence of 63 months, consisting of 3 months' imprisonment on Count One and 60 months on Count Four.

As noted at the May 14, 2020 resentencing in this matter, Borden's petition for a writ of habeas corpus is therefore GRANTED and his conviction on Count Four is VACATED. The special assessment imposed on Count Four under 18 U.S.C. § 3013 is also VACATED. The Court resentenced Borden on Count One to time served and three years of supervised release.

SO ORDERED.

Dated: May 19, 2020
New York, New York



ALISON J. NATHAN
United States District Judge